

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

FRANK NELLOM

Plaintiff,

v.

**KILOLO KIJAKAZI,¹ Acting
Commissioner of Social Security**

Defendant.

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CIVIL ACTION

No. 23-cv-01268-RAL

ORDER

AND NOW this 13th day of November 2023, upon consideration of the parties' submissions, it is **ORDERED** that:

1. Defendant's Motion to Dismiss the Complaint for failure to state a claim (Doc. No. 13) is **GRANTED**;
2. Plaintiff's Complaint (Doc. No. 2) is **DISMISSED** without prejudice to re-file after Plaintiff has exhausted his administrative remedies;
3. Plaintiff's Motions for Summary Judgment (Doc. Nos. 12, 15) are **DENIED**; all for the reasons set forth in the Memorandum Opinion filed contemporaneously with this order.

¹ Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Ms. Kijakazi should be substituted for the former Commissioner of Social Security, Andrew Saul, as the defendant in this action. No further action need be taken to continue this suit pursuant to section 205(g) of the Social Security Act. 42 U.S.C. § 405(g). (Social Security disability actions "survive notwithstanding any change in the person occupying the office of Commissioner of Social Security or any vacancy in such office").

4. The Clerk of Court shall mark this case **CLOSED** for all purposes including statistics.

BY THE COURT:

s/Richard A. Lloret
RICHARD A. LLORET
U.S. Magistrate Judge